



*Eden Environmental Citizen's Group, LLC*

July 10, 2019

Via US Mail, Certified USPS Tracking No. 9407 1118 9956 1450 4454 34

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Via US Mail

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**Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of CanAm Minerals, Inc., dba Kleen Blast, and Kleen Industrial Services, Inc.:

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This letter is being sent to you on behalf of Eden Environmental Citizen's Group, LLC ("EDEN") to give legal notice that EDEN intends to file a civil action against Kleen Industrial Services, Inc. and CanAm Minerals, Inc, dba Kleen Blast ("Discharger" or "Kleen Blast") for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the Kleen Blast facility located at 9871 8th Street in Rancho Cucamonga, California ("the Facility" or "the site").

EDEN is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

EDEN formally registered as a limited liability company (LLC) association with the California Secretary of State on June 22, 2018; however, since at least July 1, 2014, EDEN has existed as an unincorporated environmental citizen's association with members who remain associated with EDEN as of the date of this Notice.

As discussed below, the Facility's discharges of pollutants degrade water quality and harm aquatic life in the Facility's Receiving Waters, which are waters of the United States and described in Section II.B, below. EDEN has members throughout California. Some of EDEN's members live, work, and/or recreate near the Receiving Waters and use and enjoy the Receiving Waters for surfing, kayaking, camping, fishing, boating, swimming, hiking, cycling, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study.

At least one of EDEN's current members has standing to bring suit against Kleen Blast, as the unlawful discharge of pollutants from the Facility as alleged herein has had an adverse effect particular to him or her and has resulted in actual harm to the specific EDEN member(s).

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of certain individual EDEN members have been, are being, and will continue to be adversely affected by the failure of Kleen Blast to comply with the General Permit and the Clean Water Act.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

## **I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED**

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board ("SWRCB")] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "General Permit").

Information available to EDEN, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTS"), indicates that on or around August 13, 2015, Kleen Blast submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility under the 2015 Permit. Kleen Blast's assigned Waste Discharger Identification number ("WDID") is 8 36I025948.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, Kleen Blast has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377; the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

## **II. THE LOCATION OF THE ALLEGED VIOLATIONS**

### **A. The Facility**

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Kleen Blast's permanent facility address of 9871 8<sup>th</sup> Street in Rancho Cucamonga, California.

Kleen Blast is an establishment engaged in manufacturing, vending and recycling of abrasive materials. Facility operations are covered under Standard Industrial Classification Codes (SIC) 3291 – abrasive products, 2819-Industrial Chemicals and 5093-recycling.

Based on the EPA's Industrial Storm Water Fact Sheet for Sector E - Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities, polluted discharges from operations at the Facility contain pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, and arsenic; chemical oxygen demand ("COD"); biochemical oxygen demand ("BOD"); total suspended solids ("TSS"); benzene; gasoline and diesel fuels; fuel additives; coolants; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

Kleen Industrial Services recycles spent abrasives, spent refinery and industrial materials and hazardous waste, including providing temporary storage, disposal/recycling and transportation of the hazardous materials. The Facility also provides vacuum truck and dust collector waste services.

The toxic and hazardous materials handled at the facility include iron, aluminum, gypsum, calcium, lime, petroleum refinery waste, spent Portland cement, fly ash, flue gas desulfurization FDG, paint and solvent wastes, chlorinated solvents, plating waste, spent acids, batteries, machine coolant, flammable liquids, contaminated Personal Protection Equipment (PPE) and contaminated abrasives.

Furthermore, the Facility manufactures slag abrasives, both copper and coal. This process produces copious amounts of copper, ammonia, beryllium and silica, among other pollutants. Due to the abrasive blasting operations at the facility, these pollutants are being disseminated into the environment and the Facility's Receiving Waters. Specifically, coal slag is a hazardous waste byproduct of coal power plants. The beryllium in coal slag makes it even more deadly, as beryllium is a highly toxic metal. On January 9, 2017, the Occupational Safety and Health Administration (OSHA) finalized new beryllium standards and confirmed that beryllium at even trace levels can be harmful. Long-term beryllium exposure can lead to chronic beryllium disease/berylliosis (which can cause serious debilitation or death), cancer and heart failure. The EPA has set a maximum contaminant level (MCL) for beryllium at 0.004 mg/L. Furthermore, silica is also a well-known carcinogen.

Information available to EDEN indicates that the Facility's industrial activities and associated materials are exposed to storm water, and that each of the substances listed on the EPA's Industrial Storm Water Fact Sheet is a potential source of pollutants at the Facility.

#### **B. The Affected Receiving Waters**

The Facility discharges into Prado Dam, a tributary of the Santa Ana River, which eventually flows into the Pacific Ocean ("Receiving Waters").

The Santa Ana River is a water of the United States. The CWA requires that water bodies such as the Santa Ana River meet water quality objectives that protect specific "beneficial uses." The Regional Water Board has issued the *Santa Ana Regional Basin Water Quality Control Plan* ("Basin Plan") to delineate those water quality objectives.

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

### III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

#### A. Deficient Site Map and SWPPP

Kleen Blast's current Site Map and Storm Water Pollution Prevention Plan (SWPPP) fail to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows:

- (a) The Site Map does not include the minimum required components for Site Maps as indicated in Section X.E of the General Permit. Specifically, the Site Map fails to include the following:
  - 1) sample locations if different than the identified discharge locations; and
  - 2) identification of all impervious areas of the facility, including paved areas, buildings, covered storage areas or other roofed structures.
- (b) The SWPPP fails to include the **date of each SWPPP Amendment** (Section X.A.10);
- (c) The SWPPP is invalid because it was **not certified and submitted by the Facility's Legally Responsible Person**. In fact, the SWPPP was not certified by anyone. Pursuant to Section XII.K of the General Permit, all Permit Registration Documents (PRDs), including SWPPPs, must be certified and submitted by the Facility's authorized Legally Responsible Person;
- (d) The SWPPP fails to include an appropriate discussion of the **Industrial Materials** handled at the facility, including the locations where the materials are stored, received, shipped and handled, and the quantities and handling frequency of the Industrial Materials (Sections X.A.3, X.F, X.G.1.a);
- (e) The SWPPP fails to discuss in detail **Facility operations and all industrial processes** at the facility, including manufacturing, cleaning, maintenance, recycling, disposal, and any other activities related to each industrial process; and the type, characteristics, and approximate quantity of industrial materials used in or resulting from the process. Areas protected by containment structures and the corresponding containment capacity are also required to be identified and described. (X.G.1.a). Specifically, the SWPPP falsely indicates that there are no manufacturing operations at the Facility, when investigation by EDEN indicates that the Facility manufactures slag abrasives; and
- (f) The SWPPP fails to include an appropriate discussion of **drainage areas and Outfalls** from which samples must be taken during Qualified Storm Events (Section XI).

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

***B. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit***

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

1. Failure to Conduct Visual Observations

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

EDEN believes that between August 13, 2015, and the present, Kleen Blast has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

2. Failure to Collect and Analyze the Required Number of Storm Water Samples

In addition, EDEN alleges that Kleen Blast has failed to provide the Regional Water Board with the minimum number of annual documented results of Facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, Kleen Blast has failed to upload into the SMARTS database system:

- a. One storm water sample analysis for the time period July 1, 2015, through December 31, 2015;
- b. Two storm water sample analyses for the time period January 1, 2016, through June 30, 2016;
- c. One storm water sample analysis for the time period July 1, 2016, through December 31, 2016;
- d. Two storm water sample analyses for the time period July 1, 2017, through December 31, 2017;
- e. Two storm water sample analyses for the time period January 1, 2018, through June 30, 2018;
- f. Two storm water sample analyses for the time period July 1, 2018, through December 31, 2018; and
- g. Two storm water sample analyses for the time period January 1, 2019 through June 30, 2019.

On January 23, 2017, the Facility received a letter from the Santa Ana Regional Water Quality Control Board regarding its failure to collect and analyze storm water samples during the 2014-2016 reporting years, which indicated that there were qualifying storm events in the area during the reporting years.

Furthermore, pursuant to data collected from the National Oceanic and Atmospheric Administration (“NOAA”), there were sufficient storm events occurring near the Facility in Chula Vista during Facility operating hours within the reporting years to have allowed the Facility to collect at least the minimum number of storm water samples required by the General Permit.

### 3. Failure to Sample Correctly for the Parameter of pH

Pursuant to Section XI.C.2.a of the General Permit, the storm water sample “holding” time for pH analysis is 15 minutes. Kleen Blast’s laboratory reports dated January 18, 2016 and January 6, 2017 for samples collected on December 23, 2015 and December 21, 2016, evidence that the litmus test for the Facility’s pH was not conducted within the required 15-minute holding time.

4. Failure to Utilize the Correct Parameter Test Method

Table 2, Section XI.B.11 of the General Permit, specifies particular Test Methods for required sampling parameters, as listed below.

PARAMETER	TEST METHOD
TSS	SM 2540-D
Oil & Grease	EPA 1664A
Zinc Total (H)	EPA 200.8
Copper, Total (H)	EPA 200.8
Lead, Total (H)	EPA 200.8
COD	SM 5220C
Aluminum	EPA 200.8
Iron	EPA 200.7
Nitrate+Nitrite Nitrogen	SM 4500-NO3-E
Phosphorus	SM4500-P B+E
Ammonia (as N)	SM 4500-NH3 B+ C or E
Magnesium	EPA 200.7
Cadmium	EPA 200.8
Nickel	EPA 200.8
Silver	EPA 200.8
BOD	SM 5210B

Kleen Blast's storm water analysis dated January 18, 2016 and January 6, 2017, for samples collected on December 23, 2015 and December 21, 2016, failed to use the proper Test Method of 5220C for COD.

5. Failure to Utilize the Correct Sampling Parameter Units in Analytical Report

Table 2, Section XI.B.11 of the General Permit requires that all storm water analytical reports indicate parameters levels in units of milligrams per liter ("mg/L").

Kleen Blast's storm water analytical reports dated January 18, 2016 and January 6, 2017, for samples collected on December 23, 2015 and December 21, 2016, reported the Facility's parameter levels for metals in units of micrograms per liter ("ug/L"), instead of milligrams per liter ("mg/L").

6. Failure to Upload Storm Water Sample Analyses within 30 Days

Section XI.B.11.a of the General Permit requires Dischargers to submit all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event.



Kleen Blast failed to upload into SMARTS within 30 days the following sampling and analytical results pursuant to Section XI.B.11.a of the General Permit:

<b>Sample Date</b>	<b>Date of Laboratory Report</b>	<b>Date Uploaded into SMARTS</b>
12/23/2015	1/18/2016	7/11/2016

**C. Falsification of Annual Reports Submitted to the Regional Water Board**

Section XXI.L of the General Permit provides as follows:

**L. Certification**

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI.N of the General Permit provides as follows:

**N. Penalties for Falsification of Reports**

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On July 15, 2016, and July 12, 2017, Kleen Blast submitted its Annual Reports for the Fiscal Years 2015-16 and 2016-17. Mr. Fionn O'Neill signed the Reports under penalty of law. Mr. O'Neill is the current Legally Responsible Person ("LRP") for Kleen Blast.

The Annual Reports included Attachment 1 as an explanation for why Kleen Blast failed to sample the required number of Qualifying Storm Events during the reporting year for all

discharge locations, in accordance with Section XI.B. Mr. O'Neill certified in the Reports, under penalty of perjury, that the required number of samples were not collected by the Facility because allegedly there were insufficient qualifying storm water discharges during the reporting year(s) and scheduled facility operating hours.

Specifically, Kleen Blast's 2015-16 Annual Report indicated that "Events started after hours or on weekends. We were not able to collect 4 samples", and its 2016-17 Report indicated "QSE fell during non-work hours." However, the SWPPP indicates clearly that samples need to be taken within 12 hours of the start of a rain event. NOAA records clearly indicate that there were QSEs that did occur and that samples could have been taken as per the SWPPP.

Records from the National Oceanic and Atmospheric Administration (NOAA) website/database confirm that during the reporting years in question there were in fact sufficient Qualified Storm Events (QSEs) occurring near the Facility during or within 12 hours of the start of regular business hours to allow Kleen Blast to collect the requisite number of samples.

On July 12, 2018, Kleen Blast submitted its Annual Report for the Fiscal Year 2017-18. Mr. Fionn O'Neill signed the Report, once again, under penalty of law. Mr. O'Neill responded "Yes" to Question No. 3 on the Annual Report ("Did you sample the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B?") However, as discussed above, Kleen Blast failed to collect and analyze the required number of storm water samples during the reporting year in question.

#### **D. Deficient BMP Implementation**

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that Kleen Blast has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

Kleen Blast's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

**E. Discharges in Violation of the General Permit**

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

EDEN alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

EDEN hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III.B of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

**1. Discharges in Excess of Technology-Based Effluent Limitations**

The Industrial General Permit includes technology-based effluent limitations, which prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable (“BAT”) for toxic pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants. (General Permit, Section X.H.)

The EPA has published Benchmark values set at the maximum pollutant concentration levels present if an industrial facility is employing BAT and BCT, as listed in Table 2 of the General Permit. The General Permit includes “Numeric Action Levels” (“NALs”) derived from these Benchmark values; however, the NALs do not represent technology-based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT. (General Permit, Section I.M. (Finding 62)).

Kleen Blast’s exceedances of Benchmark values identified in the table listed below, indicate that it has failed and is failing to employ measures that constitute BAT and BCT, in violation of the requirements of the Industrial General Permit. EDEN alleges and notifies Kleen Blast that its storm water discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark values as listed below.

These allegations are based on the Facility’s self-reported data submitted to the Regional Water Board. Self-monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

Kleen Blast's ongoing discharges of storm water containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control also demonstrate that it has not developed and implemented sufficient BMPs at the Facility. EPA Benchmarks are relevant to the inquiry as to whether a facility has implemented BMPs. [*Cal. Sportfishing Prot. Alliance v. River City Waste Recyclers, LLC* (E.D.Cal. 2016) 205 F.Supp.3d 1128; *Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 925; *Waterkeepers Northern California v. AG Industrial Mfg. Inc.* (9th Cir. 2004) 375 F.3d 913, 919 (concentration levels in excess of EPA benchmarks are evidence supporting the citizen plaintiff's contention that defendant did not have appropriate BMPs to achieve BAT/BCT).]

Kleen Blast's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions and Receiving Water Limitations of the General Permit and are evidence of ongoing violations of Effluent Limitations:

Sample Collection Date/ Sample Outfall location	Parameter	Unit	Sample Analysis Result	EPA Benchmark NAL	EPA Benchmark NAL instantaneous Value
12/23/15 Outfall #1	Copper	mg/L	0.0207	0.0332	n/a
	Zinc	mg/L	0.227	0.26	n/a
	Nitrate+Nitrite	mg/L	.875	0.260	n/a
FY 2015-16 Averages	Nitrate+Nitrite	mg/L	.875	0.260	n/a
	Zinc	mg/L	0.227	0.26	n/a
	Copper	mg/L	0.0207	0.0332	n/a

#### **F. Failure to Comply with Exceedance Response Action Requirements**

As of July 1, 2015, the date the current General Permit became effective, all Dischargers were in "Baseline status" for all parameters listed in Table 2 of the Permit. (General Permit, Section XII(B)).

Pursuant to Section XII(C) of the General Permit, a Discharger's Baseline status for any given parameter changes to "Level 1 status" if sampling results indicate either an annual average or instantaneous NAL exceedance for that same parameter.

Level 1 status commences on July 1 following the Reporting Year during which the exceedance(s) occurred, and the Discharger enters the Exceedance Response Action (“ERA”) process. The ERA process requires the discharger to conduct a Level 1 ERA Evaluation, with the assistance of a Qualified Industrial Storm Water Practitioner (“QISP”), of the industrial pollutant sources at the Facility that are or may be related to the NAL exceedance(s), by October 1 following commencement of Level 1 status.

The Level 1 ERA Evaluation must include the identification of the corresponding BMPs in the SWPPP, as well as any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of the General Permit.

Based upon the Level 1 ERA Evaluation, the Discharger is required to, as soon as practicable, but no later than January 1 following commencement of Level 1 status, prepare a Level 1 ERA Report. (Section XII(C)(2)). The Level 1 Report must be prepared by a QISP and include a summary of the Level 1 ERA Evaluation, a detailed description of the necessary SWPPP revisions, and any additional BMPs for each parameter that exceeded an NAL.

The SWPPP revisions and additional BMP development and implementation must also be completed by January 1, and the Level 1 status discharger is required to submit via SMARTs the Level 1 ERA Report certifying that the Level 1 ERA Evaluation has been conducted, and necessary SWPPP revisions and BMP implementation has been completed. The certification also requires the QISP’s identification number, name, and contact information (telephone number, e-mail address) no later than January 1 following commencement of Level 1 status.

A Discharger’s Level 1 status for a parameter will return to Baseline status if a Level 1 ERA Report has been completed, all identified additional BMPs have been implemented, and results from four (4) consecutive qualified storm events that were sampled subsequent to BMP implementation indicate no additional NAL exceedances for that parameter.

A Discharger will enter Level 2 status if there is an NAL exceedance of the same parameter occurring during the time the Discharger is in Level 1 status.

#### Failure to Submit Level 1 ERA Report

Based on the sample data summarized above, the Facility exceeded the EPA Benchmark NAL for Zinc for the reporting year 2015-16. These results elevated Kleen Blast to Level 1 Status on July 1, 2016, pursuant to Section XII.C – Exceedance Response Actions -- of the General Permit.

Pursuant to Section XII(C)(2) of the General Permit, the Facility was required to have a QISP conduct an evaluation of the Facility by October 1, 2016, and to upload an adequate Level 1 ERA Report on or before January 1, 2017.

As of the date of this Notice, EDEN alleges that Kleen Blast has failed to conduct an adequate Level 1 status evaluation for zinc and has also failed to submit a Level 1 ERA report for its zinc exceedances.

**G. Failure to Comply with Facility SWPPP**

Section “Monitoring-3.A” of the Facility SWPPP indicates that the Facility will collect and analyze storm water samples from two qualified storm events within the first half of each reporting year (July 1 to December 31) and two QSEs within the second half of each reporting year (January 1 to June 30).

As detailed above, the Facility missed collecting storm water samples in the reporting years 2015-16, 2016-17 and 2017-18, and 2018-19.

**A. Ineligible Legally Responsible Person**

Section XXI.K of the General Permit provides:

1. All Permit Registration Documents (PRDs) for NOI and NEC coverage shall be certified and submitted via SMARTS by the Discharger’s Legally Responsible Person (LRP). All other documents may be certified and submitted via SMARTS by the LRP or by their designated Duly Authorized Representative.
2. When a new LRP or Duly Authorized Representative is designated, the Discharger shall ensure that the appropriate revisions are made via SMARTS. In unexpected or emergency situations, it may be necessary for the Discharger to directly contact the State Water Board’s Storm Water Section to register for SMARTS account access in order to designate a new LRP.
3. Documents certified and submitted via SMARTS by an unauthorized or ineligible LRP or Duly Authorized Representative are invalid.

Section XXI.K.4.a further provides that LRP eligibility for a corporation is limited to the **corporation’s responsible corporate officers**, including its president, secretary, treasurer or vice president in charge of a principal business function; or the **Facility Manager**.

The Facility applied for General Permit coverage on August 10, 2015, and designated Fionn O’Neill as its LRP. The Facility’s current SWPPP also indicates Fionn O’Neill is the LRP. However, Fionn O’Neill is not a responsible corporate officer or Facility Manager for Kleen Blast Rancho Cucamonga and is thus an ineligible LRP.

**B. Failure to Properly Train Employees/Facility Pollution Prevention Team**

Section X.D.1 of the General Permit requires each Facility to establish a Pollution Prevention Team responsible for assisting with the implementation of the requirements of the General Permit. The Facility is also required to identify alternate team members to implement the SWPPP and conduct required monitoring when the regularly assigned Pollution Prevention Team members are temporarily unavailable (due to vacation, illness, out of town business, or other absences).

Section X.H.f of the General Permit also requires that each Facility ensure that all Pollution Prevention Team members implementing the various compliance activities of the General Permit are properly trained in at least the following minimum requirements: BMP implementation, BMP effectiveness evaluations, visual observations, and monitoring activities. Further, if a Facility enters Level 1 status, appropriate team members must be trained by a QISP.

Based on the foregoing violations, it is clear that Kleen Blast has either not properly established its Pollution Prevention Team, or has not adequately trained its Pollution Prevention Team, in violation of Sections X.D.1 and X.H.f of the General Permit.

Kleen Blast may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

**IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS**

The entities responsible for the alleged violations are CanAm Minerals, Inc., dba Kleen Blast, and Kleen Industrial Services, Inc., as well as employees of the Facility responsible for compliance with the CWA.

**V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS**

The range of dates covered by this 60-day Notice is from at least August 13, 2015, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

## VI. CONTACT INFORMATION

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez  
EDEN ENVIRONMENTAL CITIZEN'S GROUP  
2151 Salvio Street #A2-319  
Concord, CA 94520  
Telephone: (925) 732-0960  
Email: [Edenenvcitizens@gmail.com](mailto:Edenenvcitizens@gmail.com) (emailed correspondence is preferred)  
Website: [edenenvironmental.org](http://edenenvironmental.org)

EDEN has retained counsel in this matter as follows:

XHAVIN SINHA  
Sinha Law  
2445 Augustine Drive, Suite 150  
Santa Clara, CA 95054  
Telephone: (408) 791-0432  
Email: [xsinha@sinha-law.com](mailto:xsinha@sinha-law.com)

To ensure proper response to this Notice, all communications should be addressed to EDEN's legal counsel, Mr. Xhavin Sinha.

## VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. **These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.**



In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

**Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d) and California Code of Civil Procedure §1021.5, EDEN will seek to recover its pre and post-litigation costs, including all attorneys' and experts' fees and costs incurred** (see *Southern California Alliance of Publicly Owned Treatment Works v. U.S. Environmental Protection Agency* (9<sup>th</sup> Cir. 2017) 853 F.3d 1076; *Vasquez v. State of California* (2008) 45 Cal.4th 243).

### **VIII. CONCLUSION**

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages Kleen Blast's counsel to contact **EDEN's counsel** within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein. Please do not contact EDEN directly.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if Kleen Blast wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



AIDEN SANCHEZ  
Eden Environmental Citizen's Group

Copies to:

Andrew Wheeler: [wheeler.andrew@Epa.gov](mailto:wheeler.andrew@Epa.gov)  
Administrator, U.S. EPA

State Water Resources Control Board  
Eileen Sobeck, Executive Director  
[eileen.sobeck@waterboards.ca.gov](mailto:eileen.sobeck@waterboards.ca.gov)  
Mayumi Okamoto, Office of Enforcement:  
[Mayumi.Okamoto@waterboards.ca.gov](mailto:Mayumi.Okamoto@waterboards.ca.gov)

Regional Administrator, U.S. EPA – Region 9  
Jennifer Pierce: [pierce.jennifer@epa.gov](mailto:pierce.jennifer@epa.gov)  
Laurie Kermish: [kermish.Laurie@epa.gov](mailto:kermish.Laurie@epa.gov)